

1 GOVERNMENT OF GUÅHAN
2 DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES
3 DIVISION OF ENVIRONMENTAL HEALTH
4
5
6
7
8
9

10
11
12
13
14
15 **RULES AND REGULATIONS GOVERNING THE**
16 **ISSUANCE OF SANITARY PERMITS**
17
18
19
20
21
22

23
24 Title 26 Guam Administrative Rules and Regulations
25

26 Chapter 4
27

28 Article 5
29
30
31
32
33
34
35
36
37
38
39

TABLE OF CONTENTS

1		
2		
3	§4501. Purpose.....	3
4	§4502. Authority	3
5	§4503. Title	3
6	§4504. Definitions.....	3
7	§4505. Sanitary Permit Applications for New and Renewal	7
8	§4506. Fees	8
9	§4506.1 Notification of Fee Schedule.....	13
10	§4507. Administrative Penalty.....	16
11	§4508. Suspension or Revocation of Sanitary Permit.....	16
12	§4509. Hearing.....	199
13	§4510. Suspension without Hearing	200
14	§4511. Effective Date	200
15	§4512. Severability	211
16		

1 **§4501. Purpose.** The purpose of these rules and regulations is to govern the issuance,
2 fees, and administrative penalty for Sanitary Permits.

3 **§4502. Authority.** Section 20105 of Chapter 20 and Section 21102 of Chapter 21, Title
4 10 Guam Code Annotated authorizes the Director of the Department of Public Health and Social
5 Services to promulgate rules and regulations necessary to carry out the provisions of the law
6 governing the sanitary operations of health-regulated establishments. Section 20118 of Chapter
7 20 of Title 10 Guam Code Annotated authorizes the Department to promulgate rules and
8 regulations for administrative penalties.

9 **§4503. Title.** These rules and regulations shall also be known and cited as the *Sanitary*
10 *Permit Rules and Regulations.*

11 **§4504. Definitions.** As used in these rules and regulations:

12 ~~(a) — *Chemical Toilet* shall mean a building or structure housing one (1) or more water-~~
13 ~~tight containers of liquid chemical disinfectants intended to receive and hold human~~
14 ~~excrement.~~

15 (a) *Cosmetic Establishment* shall mean any premises or portion thereof, wherein any
16 of the following is practiced for compensation:

17 (1) Shaving, clipping, trimming, or cutting human hair;

18 (2) Singeing, shampooing, arranging, adorning, dressing, curling, waving,
19 permanent waving, tinting, applying tonic to or dyeing human hair;

20 (3) Giving facial, scalp, neck or body massages or treatments with oils, creams,
21 lotions, or other preparations either by hand or mechanical appliances;

22 (4) Applying cosmetic preparations, antiseptics, powders, oils, clays, lotions, or
23 other preparations to scalp, face, neck, or hands; or

1 (5) Manicuring or pedicuring.

2 (b) *Department* shall mean the Department of Public Health and Social Services of the
3 government of Guam.

4 (c) *Director* shall mean the Director of the Department of Public Health and Social
5 Services, or his designated representative.

6 (d) *Dry Cleaning Establishment* shall mean any place, building, structure, room,
7 premises, or portions thereof, used in the business of dry cleaning and dyeing of wearing apparel,
8 household linens and other articles, including coin-operated dry-cleaning establishments.

9 (e) *Eating and Drinking Establishment* shall mean any food service establishment,
10 mobile food service establishment, or vending machine.

11 (f) *Edible Garbage Feeding Establishment* shall mean ~~swill or leavings of food or any~~
12 ~~abandoned, spoiled, condemned meat, fish, fowl, vegetable matter, or offal from slaughtered~~
13 ~~animals, liquid or solid, which is free of toxic, or deleterious substances, and is deemed by the~~
14 ~~Director as being suitable for use solely as animal feed.~~ a farm, ranch, facility, premises, site, or
15 any place approved by the Director for operation to process edible garbage for the purpose of
16 livestock feeding.

17 (g) *Employee* shall mean any individual, including the owner, operator, manager, or
18 other person performing any function in a health-regulated establishment, whether for
19 compensation or otherwise.

20 (h) *Food Establishment* shall mean and includes every establishment or place which is
21 used or occupied as a bakery, confectionary, cannery, dairy, creamery, packing house, grocery,
22 supermarket, meat or poultry market, fruit or vegetable market, delicatessen, beverage plant,
23 slaughterhouse, poultry processing plant, fish processing plant, frozen food processing plant,

1 public market, food warehouse, or for the production, processing, manufacture, preparation for
2 sale, canning, bottling, packing, packaging, storage, sale, or distribution of food.

3 (i) *Health-Regulated Establishment* shall mean any (1) eating and drinking
4 establishment; (2) food establishment; (3) institutional facility; (4) hotel; (5) cosmetic
5 establishment; (6) laundry and dry-cleaning establishment; (7) public swimming pool; (8)
6 mortuary; (9) edible garbage feeding establishment; ~~(10) chemical toilet~~; and (10) any other
7 establishment required to possess a Sanitary Permit issued by the Department.

8 (j) *Hotel* shall mean any structure or any portion of any structure, including any
9 lodging house, rooming house, dormitory (including a dormitory housing for contract employees),
10 health spa, bachelor hotel, studio hotel, motel, private club, containing four (4) or more guest
11 rooms and which is occupied or is intended or designed for occupancy, by four (4) or more guests,
12 whether rent is paid in money, goods, labor, or otherwise, or whether with or without meals. It
13 does not include any penal institutions, hospital, clinic, nursing home, school, laboratory, or child
14 care facility.

15 (k) *Institutional Facility* shall mean any structure or any portion of any structure
16 operating as a child care facility, penal institution, school, hospital, clinic, nursing home, or
17 laboratory as defined in Title 10 GCA, Chapter 25.

18 (l) *Mortuary* shall mean any place used for such activities as are incident, convenient,
19 or related to the preparation and arrangements for the funeral, transportation, burial, cremation, or
20 other disposition of dead human bodies.

21 (m) *Public Laundry and ~~Dry-Cleaning Establishment~~* shall mean any place, building,
22 structure, room, establishment, premises or portions thereof, used in the business of making,
23 sorting, washing, drying, drying, starching, ironing, or wearing apparel, household linens and other

articles, including any establishment providing laundering equipment for use by customers for a fee, and known by various terms such as laundromat, wash-o-mat, or launderette.

(n) *Public Swimming Pool* shall mean any artificial structure, basin, chamber, or tank constructed of impervious material used or intended to be used for swimming, diving, wading, or recreational bathing (but *does not* include conventional bath-tubs where the primary purpose is the cleaning of the body or individual therapeutic tubs) and that is available for public use, whether for a fee or free of charge; or owned or used by any business, partnership, corporation or person for the use of their customers, clients, guests or employees, including, but not limited to, a commercial pool, a community pool or a pool at a hotel, motel, resort, auto park, trailer park, apartment house, or other multiple rental unit, private club, public club, public or private school, gymnasium or health establishment.

(o) *Sanitary Permit* shall mean the official document issued by the Department of Public Health and Social Services authorizing a health-regulated establishment to operate its business.

(p) *Temporary Food Service Establishment (also known as TFSE)* shall mean any eating and drinking establishment which operates at a fixed location for a period of ~~time not exceeding six (6) months~~ 1 to 180 days in conjunction with a carnival, fair, circus, exhibition, or other transitory gathering not of a permanent structure, which are further described and identified below based on its duration of operation:

(1) TFSE-1 which shall be those operating for 1 day only;

(2) TFSE-W which shall be those operating for 1 day, every week, for a year;

(3) TFSE-7 which shall be those operating for up to 7 days, but not less than two consecutive days;

1 (4) TFSE-180 which shall be those operating for up to 180 consecutive days; and

2 (5) TFSE-X which shall be those operating in various combination of days not
3 defined elsewhere; provided, it does not exceed 180 days.

4 (q) *Special Village Event* shall mean a carnival, fair, circus, exhibition, or other
5 transitory gathering sponsored by the village Municipal Planning Council, *not to exceed* seven (7)
6 consecutive days.

7 **§4505. Sanitary Permit Applications for New and Renewal.**

8 (a) All applications, and supporting documents, for a Sanitary Permit shall be in a
9 form, format, and medium prescribed by the Director.

10 (b) A non-refundable deposit of ~~Twenty~~ Thirty Dollars (~~\$20.00~~\$50.00) shall be made
11 to the 'Treasurer of Guam' at the time the application for Sanitary Permit is submitted to the
12 Department. Upon completion and processing of the application, the deposit amount shall be
13 deducted from the appropriate fee listed in §4506. In the event the calculated, prorated fee for the
14 Sanitary Permit is less than the non-refundable deposit then the applicant shall pay the prorated
15 fee as the deposit.

16 (c) Any application that remains inactive for sixty (60) consecutive days because of
17 the inaction by the applicant (i.e., pending submission of required supporting documents), shall be
18 considered permanently inactive, removed from the file for processing, and then destroyed, and
19 the non-refundable ~~Twenty Dollars (\$20.00)~~ deposit shall be automatically forfeited.

20 (d) An applicant who wishes to re-apply after his or her application has become
21 permanently inactive under the provision of §4505(c) shall be considered a new applicant and shall
22 re-submit the application and supporting documents and pay all required fees, including the
23 ~~Twenty Dollars (\$20.00)~~ non-refundable deposit fee.

1 (e) Failure to renew a Sanitary Permit within sixty (60) days of the due date shall void
2 the Sanitary Permit. A valid Sanitary Permit may not be reinstated until a new application is filed
3 and approved by the Department and payment is received, along with any other fees and monetary
4 penalty.

5 (f) A health-regulated establishment that fails to renew its Sanitary Permit for two
6 consecutive renewal periods shall be considered inactive, and any application received thereafter
7 for that establishment shall be treated as a new application and meet all the requirements as a new
8 applicant.

9 (g) The expiration date of a Sanitary Permit issued for a Temporary Food Service
10 Establishment shall be the final date of the temporary event.

11 (h) Any Temporary Food Service Establishment or Special Village Event that meets
12 criteria, as determined by the Department, based on the event's anticipated number of people
13 attending, including highly susceptible populations; expected number of vendors; and types of
14 food to be served or offered for sale must provide at least one designated, reserved parking space
15 near the event and a sheltered booth to be utilized by the Department for the duration of the event
16 by the organizer. The designated parking space shall be no further than the nearest parking made
17 available to the event organizer and/or the public, whichever is closer, and the booth shall have, at
18 a minimum, a table for writing that is no less than 24 sq. ft. in size, two chairs, and an overhead
19 protection from the elements, such as a canopy or other covering.

20 **§4506. Fees.** Fees for the issuance of a Sanitary Permit *shall* be as follows:

21 (a) Excluding TFSE, the Sanitary Permit fee for all health-regulated establishments
22 shall be the following, which shall be pro-rated based on the annual renewal date of the permit:

1 (1) Three Hundred Eighty-Five Dollars (\$368.00), effective immediately upon
2 the adoption of these rules and regulations, if the establishment has 1 to 10 employees. For
3 health-regulated establishments with 11 or more employees, Five Dollars (\$5.00) shall be
4 assessed for each additional employee above 10.

5 (2) Four Hundred Eighty-Five Dollars (\$468.00) on the second anniversary of
6 these rules and regulations adoption, if the establishment has 1 to 10 employees. For
7 health-regulated establishments with 11 or more employees, Five Dollars (\$5.00) shall be
8 assessed for each additional employee above 10.

9 (3) Five Hundred Eighty-Five Dollars (\$568.00) on the third anniversary of these
10 rules and regulations adoption, if the establishment has 1 to 10 employees. For health-
11 regulated establishments with 11 or more employees, Five Dollars (\$5.00) shall be assessed
12 for each additional employee above 10.

13 (4) Six Hundred Seventy-Five Dollars (\$668.00) on the fourth anniversary of
14 these rules and regulations adoption, if the establishment has 1 to 10 employees. For
15 health-regulated establishments with 11 or more employees, Five Dollars (\$5.00) shall be
16 assessed for each additional employee above 10.

17 (5) Seven Hundred Sixty-Eight Dollars (\$768.00) on the fifth anniversary of
18 these rules and regulations adoption, and thereafter, if the establishment has 1 to 10
19 employees. For health-regulated establishments with 11 or more employees, Five Dollars
20 (\$5.00) shall be assessed for each additional employee above 10.

21 (b) The Sanitary Permit fee for Temporary Food Service Establishments shall be:

22 (1) Fifty Dollars (\$50.00) for TFSE-1;

23 (2) One Hundred Fifty-Five Dollars (\$155.00) for TFSE-W;

- (3) One Hundred Twenty-Five Dollars (\$125.00) for TFSE-7;
- (4) Two Hundred Dollars (\$300.00) for TFSE-180;
- (5) Three Hundred Dollars (\$200.00) for TFSE-X; and
- (6) Twenty-Five Dollars (\$25.00) for Special Village Events officially sponsored by a village Municipal Planning Council, provided, however, that the vendor shall be limited to three (3) events per calendar year per permit issued.
- (c) The Sanitary Permit fee for vending machines shall be:
- (1) Five Hundred Dollars (\$500.00) per vending machine for each of the first style or model of vending machine; and
- (2) Ten Dollars (\$5.00-\$10.00) for each additional vending machine.
- ~~(d) — The Sanitary Permit fee for chemical toilet operator shall be Five Hundred Dollars (\$500.00) regardless of the number chemical toilets possessed by the operator.~~
- (d) Issuance of a duplicate Sanitary Permit shall be Ten Dollars (\$10.00).
- (e) Amendments to an existing Sanitary Permit shall be Ten Dollars (\$10.00).
- (f) An applicant for a Sanitary Permit may request for the permit to be expedited and processed within 24 hours the request is submitted. The Department may grant such request provided the applicant has met all the requirements of the Department to obtain a Sanitary Permit, including the requirement for the Pre-Operational Inspection. The Department shall assess a fee One Hundred Dollars (\$100.00) for expedited processing in addition to the regular processing fee. Applications for a Sanitary Permit for Temporary Food Service Establishments which are submitted one day or less prior to the event will automatically be assessed an expedited processing fee of Fifty Dollars (\$50.00), in addition to the regular processing fee.

1 (g) The cost of the Pre-Operational Inspection is included in the initial payment for the
2 Sanitary Permit. However, a fee of Fifty Dollars (\$50.00) an hour shall be assessed for all
3 subsequent inspections. With the exception of the first hour, fractional hours shall be rounded up
4 to the nearest whole hour if more than one half (0.5) hour, and rounded down if less than one half
5 (0.5) hour.

6 (h) Request for an expedited Pre-Operational Inspection may be granted, as determined
7 by the Director, if such inspection does not cause the disruption of any pre-existing inspections
8 scheduled for other applicants. The fee for expedited Pre-Operational Inspection shall be Two
9 Hundred Dollars (\$200.00) in addition to all other required fees established in these rules and
10 regulations if performed during normal Government of Guam business hours (8:00 am – 5:00 pm;
11 Monday through Friday). Expedited Pre-Operational Inspection conducted outside normal
12 business hours, including weekends, shall be Five Hundred Dollars (\$500.00).

13 (i) Any establishment that has its Sanitary Permit suspended under the provision of
14 Title 10 GCA, Chapter 21, §21109:

15 (1) That requests and obtains a re-inspection from the Department that results
16 in the finding that it had not corrected all of its violations shall be assessed a fee of One
17 Hundred Twenty-Five Dollars (\$125.00), which must be paid by the establishment prior to
18 any subsequent re-inspection by the Department.

19 (2) That requests to be re-inspected outside normal Government of Guam
20 business hours (8:00 a.m. to 5:00 p.m.; Monday through Friday) may submit a request to
21 the Department, and if approved, shall be assessed a flat fee of Three Hundred Dollars
22 (\$300.00). For any Government of Guam holiday, the fee shall be Six Hundred Dollars
23 (\$600.00), if the request is approved. Payment shall be made on the first business day

1 immediately after the inspection, and if such payment is not made, the Department may re-
2 suspend the Sanitary Permit immediately without any advanced notice and assess all other
3 applicable fees. If the re-inspection results in the non-reinstatement of the Sanitary Permit
4 (i.e., failed inspection) and the establishment fails to make the requirement payment, the
5 Department shall not conduct another re-inspection until such time all outstanding fees
6 have been paid by the establishment.

7 (j) Request for a follow-up sanitation inspection, prior to the date noted in the
8 inspection report, may be granted by the Department if resources permit. The fee for early follow-
9 up sanitation inspection shall be One Hundred Dollars (\$100.00), which shall be paid in advance
10 prior to the inspection.

11 (k) An application to renew a Sanitary Permit shall be received by the Department prior
12 to the date of that permit's expiration date, and any application received after the expiration date
13 shall be assessed a penalty fee of Twenty-Five Dollars (\$25.00), in addition to all other applicable
14 fees.

15 (l) Any health-regulated establishment that operated, regardless of the duration,
16 without a Sanitary Permit shall pay the required Sanitary Permit fee for its annual permit,
17 Temporary Food Service Establishment permit, or the Special Village Event permit, retroactively,
18 for that time period, inclusive of the Twenty Dollars (\$20.00) late application submission fee, if
19 applicable.

20 (m) A Temporary Food Service Establishment, or a sponsor of an event with such
21 establishment, that requests, and is granted, a variance pursuant to the Guam Food Code, which
22 causes the Department to increase its inspection frequency or duration so to closely monitor the

establishment in ensuring that the approved modification or waiver does not create any health hazard or nuisance shall pay a fee of Three Hundred Dollars (\$300.00).

(n) All fees collected pursuant to these rules and regulations shall be non-refundable.

(o) The fee schedule established pursuant to these rules and regulations shall become effective immediately upon enactment.

~~(a) — The Sanitary Permit fee for the following health-regulated establishments shall be Two Hundred Ninety Dollars (\$290) if the establishment has 1 to 10 employees and Five Dollars (\$5.00) for each additional employee above ten (10) thereafter; for establishments with less than ten (10) employees, the fee shall be One Hundred Fifty Dollars (\$150.00) until January 1, 2012; for establishments with less than ten (10) employees, the fee shall be Two Hundred Twenty Dollars (\$220.00) from January 2, 2012 until January 2, 2014:~~

~~(1) Eating and Drinking Establishments, excluding vending machines and temporary food service establishments;~~

~~(2) Food Establishments;~~

~~(3) Institutional Facilities;~~

~~(4) Hotels;~~

~~(5) Cosmetic Establishments;~~

~~(6) Public Laundry and dry cleaning establishments;~~

~~(7) Public Swimming Pools;~~

~~(8) Mortuaries;~~

~~(9) Edible Garbage Feeding Establishments;~~

~~(10) Commercial animal establishments; and~~

1 ~~(11) Any other establishment required to obtain a Sanitary Permit from the~~
2 ~~Department not explicitly mentioned in these rules and regulations.~~

3 ~~(b) The Sanitary Permit fee for Temporary Food Service Establishments shall be:~~

4 ~~(1) One Hundred Dollars (\$100.00) for those operating for less than six (6) months,~~
5 ~~but more than three (3) days; and~~

6 ~~(2) Fifty Dollars (\$50.00) for those operation for three (3) days; and~~

7 ~~(3) Twenty Five Dollars (\$25.00) for Special Village Events officially sponsored~~
8 ~~by a village Municipal Planning Council, provided, however, that the vendor shall be~~
9 ~~limited to three (3) events per calendar year per permit issued.~~

10 ~~(c) The Sanitary Permit fee for vending machines shall be:~~

11 ~~(1) Two Hundred Ninety Dollars (\$290) per vending machine for each of the first~~
12 ~~style or model of vending machine; and~~

13 ~~(2) Five Dollars (\$5.00) for each additional vending machine.~~

14 ~~(d) The Sanitary Permit fee for chemical toilet operator shall be Five Hundred Dollars~~
15 ~~(\$500.00) regardless of the number chemical toilets possessed by the operator.~~

16 ~~(e) Issuance of a duplicate Sanitary Permit shall be Ten Dollars (\$10.00).~~

17 ~~(f) Amendments to an existing Sanitary Permit shall be Ten Dollars (\$10.00).~~

18 ~~(g) An applicant for a Sanitary Permit may request for the permit to be expedited and~~
19 ~~processed within 24 hours the request is submitted. The Department may grant such request~~
20 ~~provided the applicant has met all the requirements of the Department to obtain a Sanitary Permit,~~
21 ~~including the requirement for the Pre Operational Inspection. The Department shall assess a fee~~
22 ~~of Seventy Five Dollars (\$75.00) for expedited processing in addition to the regular processing~~
23 ~~fee. Applications for a Sanitary Permit for Temporary Food Service Establishments which are~~

1 submitted one day or less prior to the event will automatically be assessed an expedited processing
2 fee.

3 (h) ~~The cost of the structural inspection, also known as a pre-operation inspection, is~~
4 ~~included in the initial payment for the Sanitary Permit. However, a fee of Fifty Dollars (\$50.00)~~
5 ~~an hour shall be assessed for all subsequent inspections. With the exception of the first hour,~~
6 ~~fractional hours shall be rounded up to the nearest whole hour if more than one half (0.5) hour,~~
7 ~~and rounded down if less than one half (0.5) hour.~~

8 (i) ~~Request for an expedited structural inspection may be granted, as determined by~~
9 ~~the Director, if such inspection does not cause the disruption of any pre-existing inspections~~
10 ~~scheduled for other applicants. The fee for expedited Pre Operational Inspection shall be One~~
11 ~~Hundred Fifty Dollars (\$150.00) in addition to all other required fees established in these rules and~~
12 ~~regulations.~~

13 (j) ~~Any establishment whose Sanitary Permit is suspended under the provisions of~~
14 ~~Title 10 GCA, Chapter 21, §21109, and who is granted reinstatement by the Department as set out~~
15 ~~in Title 10 GCA, Chapter 21, §21110, shall first pay a re-opening fee of One Hundred Dollars~~
16 ~~(\$100.00) before the Sanitary Permit is returned or re-issued.~~

17 (k) ~~The fee schedule established pursuant to this §4506 shall become effective~~
18 ~~immediately upon enactment for new applications, provided, however, it shall become effective~~
19 ~~for the renewal of all Sanitary Permits issued prior to the enactment of these rules on June 1, 2012.~~

20 **§4506.1 Advance Notification of Fee Schedule.** The Director shall ensure that advance,
21 ~~written~~ notification is provided to all Sanitary Permit licensees relative to the cost for permit
22 renewal upon prior to the expiration of the ~~their current~~ Sanitary Permit. ~~The information shall be~~

1 ~~immediately provided as a permit renewal notification.~~ The notification may be in a form of a
2 press release to the local news media.

3 **§4507. Administrative Penalty.**

4 (a) Any establishment, ~~which whose~~ had its Sanitary Permit is suspended under the
5 provision of Title 10 GCA, Chapter 21, §21109, is granted reinstatement by the Department as set
6 out in Title 10 GCA, Chapter 21, §21110, shall first pay a re-opening fee of Three Hundred Dollars
7 (\$300.00) ~~One Hundred Dollars (\$100.00)~~, if it has ten or less employees, or Five Hundred Dollars
8 (\$500.00), if it has eleven or more employees, before the Sanitary Permit is returned or re-issued
9 by the Department.

10 (b) The Department, at its discretion, shall assess monetary fine in accordance with the
11 following:

12 (1) Operating an establishment without a valid Sanitary Permit shall be a fine of no
13 more than Two Thousand Five Hundred Dollars (\$2,500.00) but no less than Three
14 Hundred Fifty Dollars (\$350.00)

15 (2) Transferring a Sanitary Permit to another person or to another location, or
16 posting on or using the permit in any way at any other premises other than for which it was
17 issued shall be a fine of no more than Two Thousand Five Hundred Dollars (\$2,500.00),
18 but no less than Three Hundred Fifty Dollars (\$350.00).

19 (3) Prohibiting the Department from accessing and inspecting its permitted health-
20 regulated establishment shall be a fine of no more than Two Thousand Five Hundred
21 Dollars (\$2,500.00), but no less than Three Hundred Fifty Dollars (\$350.00).

22 (4) Prohibiting the Department from examining and copying its records that are
23 required to be kept and maintained by the health-regulated establishment shall be a fine of

1 no more than One Thousand Five Hundred Dollars (\$1,000.00), but no less than Two
2 Hundred Dollars (\$200.00).

3 (5) Removing, defacing, destroying, or concealing an inspection report, letter
4 grade, or closure notice shall be a fine of no more than One Thousand Dollars (\$1,000.00),
5 but no less than Two Hundred Fifty Dollars (\$250.00).

6 (6) Knowingly authorizing a person to work who has a communicable disease that
7 can potentially be transmitted to the public in the course of that person's employment shall
8 be a fine of no more than Five Thousand Dollars (\$5,000.00), but no less than Five Hundred
9 Dollars (\$500.00).

10 (7) Having a repeat violation of the same critical requirement, with the assigned six
11 (6) demerit points, within a one-year period (365 days) shall be a fine of no more than One
12 Thousand Dollars (\$1,000.00), but no less than One Hundred Dollars (\$100.00) per
13 violation.

14 (8) Operating an eating and drinking establishment or food establishment without
15 a manager who possesses a Certificate of Management Certification shall be a fine of no
16 more than One Thousand Dollars (\$1,000.00), but no less than Two Hundred Dollars
17 (\$200.00).

18 (9) Importing a consumer item regulated by Title 10 Guam Code Annotated,
19 Chapter 32 (Hazardous Substances Act) and Chapter 40 (Guam Food, Drug and Cosmetic
20 Act) that is misbranded, adulterated, or otherwise prohibited by law shall be a fine of no
21 more than Twenty-Five Thousand Dollars (\$25,000.00), but no less than Five Hundred
22 Dollars (\$500.00).

1 (c) Assessment of monetary penalty may occur concurrently with other administrative,
2 civil, and/or criminal penalty authorized by law.

3 (d) Before imposing an administrative penalty against a person or a health-regulated
4 establishment, the Director shall issue a notice of intent to impose the penalty and provide the
5 individual or business an opportunity to request a hearing on the proposed penalty. The request
6 must be made within fifteen (15) business days of the date the notice of intent is served upon the
7 person or health-regulated establishment. Serving of the notice of intent to the person in charge
8 of the health-regulated establishment, or by certified mail to the last known mailing address of the
9 health-regulated establishment, shall be acceptable means of notification.

10 (e) The administrative penalty hearing shall be held in accordance with the
11 Administrative Adjudication Law (Title 5 GCA, Chapter 9).

12 (f) Any person or health-regulated establishment may seek review of any administrative
13 penalty imposed before the Superior Court of Guam. Such review shall be upon the record
14 established before the Director and not de novo. The Superior Court may sustain, modify, or
15 vacate any administrative penalty it reviews.

16 (g) If any person or health-regulated establishment fails to comply with an administrative
17 penalty order after it has become final:

18 (1) The Director may suspend the Sanitary Permit of the health-regulated
19 establishment until such time that the payment is made in full, but not before a written
20 notice is issued to the establishment notifying it of the action by serving of such notice to
21 the person in charge of the health-regulated establishment, or by certified mail to the last
22 known mailing address of the health-regulated establishment, at least seven (7) calendar
23 days before the suspension takes effect; or

1 (2) The Director may forward the matter to the Attorney General of Guam to bring
2 a civil action to enforce the order, or to recover the amount ordered or assessed, in
3 accordance to law.

4 (3) The Director may pursue both §4507(g)(1) and §4507(g)(2), if he/she so
5 desires.

6 **§4508. Suspension or Revocation of Sanitary Permit.**

7 (a) The Director may suspend or revoke any Sanitary Permit under the provisions of Title
8 10 GCA, Chapter 21, §§21107(2)(d) and 21109, or upon any violation by a health-regulated
9 establishment or by any of its employees for any environmental health violation under Title 10 of
10 the Guam Code Annotated, Chapters 20 through 33 and 35 through 40, or any rules and regulations
11 promulgated concerning Sanitary Permits.

12 (b) A health-regulated establishment with a suspended Sanitary Permit, as one of its
13 conditions in having its Sanitary Permit reinstated, shall be required the following:

14 (1) The staff and management receive applicable training and/or consultation
15 from the Department; and

16 (2) Submits a corrective action plan and/or other applicable, related
17 documentation to the Department.

18 The date, time, and venue for the training or consultation shall be coordinated between the
19 Department and the health-regulated establishment.

20 **§4509. Hearing.** (a) Any health-regulated establishment whose Sanitary Permit is to be
21 suspended or revoked *shall* be notified by the Director in writing of the Department's intention
22 and the reasons therefore.

1 (b) Any health-regulated establishment that receives a notice of violation with intent to
2 suspend or revoke as described in Subsection (a) of this §4508 and that wishes to contest *shall*
3 request a hearing with the Director in writing *no later than* fifteen (15) calendar days after receipt
4 of the notice, and *shall* state the grounds for objecting to the intended suspension or revocation.
5 The Administrative Adjudication Law's hearing procedure applies.

6 (c) Upon completion of a hearing, the Director *shall* make a written determination
7 concerning the violation and whether a suspension or revocation is to be imposed.

8 **§45010. Suspension without Hearing.** (a) In accordance ~~to~~ with Title 10 GCA, Chapter
9 21, §§21107(d) and 21109(a) and (b), a Sanitary Permit may be suspended without prior hearing:

10 (1) when the demerit score of the establishment is more than forty (40);

11 (2) at the discretion of the Director for violating any provisions of Title 10
12 GCA, Chapters 20 through 40; and

13 (3) for twice violating the same requirement deemed critical under the
14 applicable rules and regulations of the Department within any six-month period, in which
15 case, it *shall not* exceed five (5) days.

16 (b) A suspension without prior hearing may remain in effect until the violation is
17 corrected by the establishment, or resolved after a hearing in accordance with the Administrative
18 Adjudication Law. The Director *shall* have the discretion to decide whether the suspension shall
19 be continued pending a hearing.

20 **§4511. Effective Date.** These rules and regulations *shall* become effective immediately
21 upon enactment.

1 **§4512. Severability.** *If* any provision or application of any provision of these rules and
2 regulations are held invalid, such invalidity shall *not* affect the other provisions or applications of
3 these rules and regulations.

PROPOSED